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5                   UNITED STATES DISTRICT COURT  
6                   WESTERN DISTRICT OF WASHINGTON  
7                   AT SEATTLE

8                   ZERO CLOUD ONE INTELLIGENT  
9                   TECHNOLOGY (HANGZHOU) CO.  
10                  LTD.,

11                  Plaintiff,

12                  v.

13                  FLYING HELIBALL LLC; WORLD  
14                  TECH TOYS, INC.

15                  Defendants.

16                  CASE NO. 2:24-cv-01699-JNW  
17                  ORDER DENYING MOTION FOR  
18                  TEMPORARY RESTRAINING ORDER

19                   **1. INTRODUCTION**

20                  This matter comes before the Court on Plaintiff Zero Cloud Intelligent  
21                  Technology (Hangzhou) Co. Ltd.’s (“Zero Cloud”) Motion for a Temporary  
22                  Restraining Order (TRO) and Preliminary Injunction against Defendants Flying  
23                  Heliball, LLC (“Flying Heliball”) and World Tech Toys, Inc. (“World Tech Toys”).  
Dkt. No. 7. Zero Cloud seeks an injunction ordering Defendants to retract their  
“takedown” requests to Amazon regarding Zero Cloud’s HOVERAir X1 products and  
to abandon further takedown actions based on Defendants’ so-called bad-faith  
patent infringement claims. *Id.* at 30. Having closely reviewed the parties’ briefing,

1 the law, and the record, and having held a hearing on the matter, *see* Dkt. No. 19,  
2 the Court DENIES the motion because Zero Cloud fails to demonstrate a likelihood  
3 of success on the merits and irreparable harm.

4 **2. FINDINGS OF FACT<sup>1</sup>**

5 This action centers on U.S. Patent 7,100,866 (“the ’866 Patent”). Defendant  
6 World Tech Toys is the owner and exclusive licensee of the patent, and Defendant  
7 Flying Heliball licenses the patent from World Tech Toys. Dkt. No. 8 at 2.

8 As described in its abstract, the ’866 Patent comprises an integrated system  
9 of several components: a “vehicle having a propeller mechanism”; a “transmitter  
10 positioned on the bottom of the vehicle for transmitting a signal from the vehicle  
11 downwardly away from the vehicle”; a “receiver... positioned on the bottom of the  
12 vehicle for receiving the signal as it is bounced off of a surface”; and a “control  
13 system” that “automatically sets the speed of the propeller mechanism in response  
14 to the receiver.” Dkt. No. 1-1 at 2. The abstract explains how these components  
15 interact:

16 “The control system sets the speed of the propeller mechanism to a first  
17 speed when the receiver receives the bounced signal[,] and the control  
18 system sets the speed of the propeller mechanism to a second speed  
19 when the receiver does not receive the bounced signal. The first speed is  
20 predefined as a speed that causes the vehicle to gain altitude, while the  
21 second speed is predefined as a speed that causes the vehicle to lose  
22 altitude. When the vehicle reaches a predetermined distance away from  
23 the surface of the object, the vehicle will hover at the predetermined  
distance as the control system toggles between the first and second  
speeds.”

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1 Findings of fact and conclusions of law made in connection with a temporary  
2 restraining order are not binding adjudications. *Hordphag Rsch. Ltd. v. Garcia*, 475  
3 F.3d 1029, 1035 (9th Cir. 2007). The Court may come to different, perhaps even  
opposite, conclusions as the case advances.

1       *Id.*

2           On March 28, 2024, Flying Heliball sent a letter to Zero Zero Robotics, Inc.  
3 (“Zero Zero”) asserting that Zero Zero and its “corporate partners” were infringing  
4 on the ’866 Patent by selling the HOVER Air X1 product. *Id.* at 143-145. Zero Cloud,  
5 which sells the HOVER Air X1 product in the United States via Amazon, self-  
6 identifies as one of the “corporate partners” targeted by the letter. *See* Dkt. No. 1 at  
7 22.

8           The letter, which included a claims chart, gave Zero Zero until April 12 to  
9 “discuss a possible license.” Dkt. No. 1-1 at 143-145. It also described the patent’s  
10 history of enforcement litigation, asserting that “[i]n every case brought by Heliball  
11 and its predecessors, the ’866 Patent has been found valid and infringed.” *Id.*

12           The product at issue—the HOVER Air X1—is a propellor-powered camera  
13 drone that produces airborne video footage while using multiple sensor systems to  
14 detect its environment to avoid collisions. *See* Dkt. No. 1-1 at 132. According to Zero  
15 Cloud, these sensor systems include: (1) a camera system that takes and analyzes  
16 digital photographs to determine the unit’s speed and position (“Visual Inertial  
17 Odometry” system or “VIO”); (2) a barometer; and (3) a system that determines the  
18 unit’s relative height by (a) transmitting an infrared light from a light-emitting  
19 diode (LED) facing downwards, (b) using a photodiode on the device to detect the  
20 same infrared light when it is reflected from the surface below, and (c) comparing  
21 the transmitted light signal with the received light signal to compute the device’s  
22

1 estimated distance from the reflecting surface (“Time-of-Flight sensor” or “ToF”).

2 Dkt. No. 1 at 16-17.<sup>2</sup>

3 On April 10, 2024, Zero Zero responded to Flying Heliball’s demand letter,  
 4 asking for more specific claim charts explaining how the HOVER Air X1 infringed  
 5 the patent. *See* Dkt. No. 1-1 at 220. On May 1, Flying Heliball responded, stating  
 6 the basis of the alleged infringement and attaching claim charts and constructions.  
 7 *Id.* at 220-231. These documents invoked Claims 10 and 11 of the ’866 Patent. *Id.*

8 In late July, the parties met to discuss the matter. *Id.* at 180-183. That  
 9 conversation failed to resolve the dispute. On August 21, 2024, Flying Heliball filed  
 10 a patent infringement action against Zero Zero in the U.S. District Court for the  
 11 Central District of California, alleging that the Hover Air X1 infringed Claims 1 and  
 12 10 of the ’866 Patent. *Flying Heliball, LLC v. Zero Zero Robotics, Inc.*, No. 8:24-cv-  
 13 1838 (C.D. Cal.); *see* Dkt. No. 1-1 at 185-193 (Complaint).

14 The next day, Flying Heliball sent a letter informing Zero Zero of the lawsuit  
 15 and offering Zero Zero a “non-exclusive license with a ten percent (10%) royalty rate  
 16 on all past sales paid upfront as well as a continuing non-exclusive license on all  
 17 future sales up through the expiration of the ’866 Patent.” Dkt. No. 1-1 at 129-30.  
 18 The letter stated Flying Heliball’s understanding that Zero Zero had access to  
 19 “minimal channels of trade” and that “Amazon and Shopify have sole discretion  
 20 regarding the products they list and a streamlined procedure for removing or

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22 <sup>2</sup> Zero Cloud makes these representations in the Complaint, but provides no  
 23 evidentiary support on the record. As a result, these findings of fact are taken on  
 information and belief and considered merely provisional.

1 otherwise barring the sale of products that are alleged in litigation to infringe  
2 another's patent." *Id.* The letter gave Zero Zero until August 28 to "confirm its  
3 willingness to enter into a license agreement," or else Flying Heliball would act to  
4 effect "immediate cessation of any further infringing sales." *Id.*

5 On August 28, Flying Heliball submitted an online Amazon form reporting 44  
6 Amazon Serial Identification Numbers (ASINs) associated with Zero Cloud's  
7 products as infringing. Dkt. No. 16-2 at 117. This form is publicly available on  
8 Amazon's website. *See* Dkt. No. 1-1 at 41. Following an internal process, Amazon  
9 contacted Flying Heliball on September 24, stating that it had "reviewed your  
10 report and removed the infringing content" for the reported ASINs. Dkt. No. 16-2 at  
11 121, 123. On or around September 25, Amazon sent Zero Cloud a takedown notice,  
12 explaining that Amazon had de-listed multiple Zero Cloud products "because we  
13 received a report from a rights owner alleging they may infringe upon their patent."  
14 Dkt. No. 1-1 at 59. This takedown notice did not explain the basis of alleged  
15 infringement. *Id.*

16 Not all HOVER Air X1 ASINs were removed from Amazon; according to Zero  
17 Cloud, the ASINs that were removed were the "legacy, high-traffic" ASINs with a  
18 "history of success" and "large numbers of positive consumer ratings and  
19 comments." Dkt. No. 9 at 7. The remaining product listings "do not have the high  
20 ratings and other benefits that the legacy ASINs earned and accumulated since  
21 launch of the product last year." *Id.* Due to removal of the legacy listings, Zero  
22 Cloud alleges that it has suffered loss of customer goodwill, diminished access to  
23 new customers, loss of positive online comments and reviews on its product listings,

1 diminished search and product rankings, reputational loss, removal from Amazon's  
2 Fulfillment by Amazon (FBA) and Prime Benefits programs, and loss of revenue  
3 during the holiday season, among other possible negative impacts to the business.

4 *Id.* at 7-15. Amazon is the only sales channel through which Zero Cloud sells its  
5 products; Zero Cloud receives over half of its revenue from United States sales of  
6 the HOVER Air X1 on Amazon. *Id.* at 9.

7 On September 30, 2024, Zero Zero wrote to Flying Heliball, seeking to meet  
8 and confer regarding Zero Zero's planned motions to dismiss and for Rule 11  
9 sanctions in the Central District of California litigation. Dkt. No. 1-1 at 233-236.  
10 The letter asserted that the patent infringement theory in the complaint was  
11 "absurd" because it falsely characterized the HOVER Air X1's VIO camera as a  
12 "transmitter." *Id.* The letter explained that the product's VIO and ToF systems are  
13 "substantially different from the Patent's 'transmitter/receiver pair'" because "[t]hey  
14 both always must receive light to work, but the Patent relies on both receiving and  
15 not receiving reflected light to work." *Id.* (emphasis in original). The letter  
16 demanded retraction of the Amazon takedown request. *Id.*

17 On October 2, the parties met and conferred and Flying Heliball's counsel  
18 admitted that the HOVER Air X1 camera is neither a "transmitter" nor "receiver"  
19 within the meaning of the '866 Patent. *See* Dkt. No. 1-1 at 241. Two days later,  
20 Flying Heliball wrote to Zero Zero requesting consent to file an amended complaint  
21 abandoning the erroneous assertions about the camera and focusing instead on the  
22 HOVER Air X1's "LiDAR system as the transmitter and receiver of a signal for the  
23 asserted claims." *Id.* On October 16, the parties met and conferred and could not

1 agree on language for the amended complaint. Dkt. No. 16-2 at 352. Flying Heliball  
2 moved for leave to file an amended complaint—the motion remains pending as of  
3 this time. *Id.* at 364-65.

4 Zero Cloud now seeks a TRO and preliminary injunction ordering Defendants  
5 to submit a retraction of their patent infringement notices and takedown requests  
6 to Amazon regarding the '866 patent and ordering them *not* to initiate further  
7 takedown actions based on the alleged infringement of the patent. Dkt. No. 7-1 at  
8 4-5.

### 9                   **3. CONCLUSIONS OF LAW**

#### 10           **3.1 Legal Standard.**

11           The legal standard for a TRO is the same as that for a preliminary  
12 injunction. *See Stuhlbarg Int'l Sales Co., Inc. v. John D. Brush & Co., Inc.*, 240 F.3d  
13 832, 839 n.7 (9th Cir. 2001). TROs and preliminary injunctions are “extraordinary  
14 remed[ies] that may only be awarded upon a clear showing that the plaintiff is  
15 entitled to such relief.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008).  
16 “[A] plaintiff seeking a preliminary injunction must make a clear showing that  
17 [they are] likely to succeed on the merits, that [they are] likely to suffer irreparable  
18 harm in the absence of preliminary relief, that the balance of equities tips in [their]  
19 favor, and that an injunction is in the public interest.” *Starbucks Corp. v.  
McKinney*, 144 S. Ct. 1570, 1576 (2024) (quoting *Winter*, 555 U.S. at 20). These four  
20 elements—the *Winter* factors—apply whenever a preliminary injunction is sought.  
21 *Winter*, 555 U.S. at 20. To obtain relief, a plaintiff must “make a showing on all four  
22 prongs.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135. (9th Cir. 2011)  
23

Injunctive relief can take two forms: prohibitory and mandatory. “A prohibitory injunction prohibits a party from taking action,” while “[a] mandatory injunction orders a responsible party to take action.” *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 878-79 (9th Cir. 2009) (internal quotation marks omitted). Zero Cloud’s primary request is an order commanding Flying Heliball and World Tech Toys to retract the takedown request sent to Amazon. The Court construes this as a request for a mandatory injunction, so Zero Cloud “must establish that the law and facts *clearly favor* [its] position, not simply that [it] is likely to succeed.” *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (emphasis in original). Courts do not issue mandatory injunctions in “doubtful cases.” *Id.* (quoting *Park Vill. Apartment Tenants Ass’n v. Mortimer Howard Tr.*, 636 F.3d 1150, 1160 (9th Cir. 2011)); *see also Hernandez v. Sessions*, 872 F.3d 976, 999 (9th Cir. 2017) (quoting *Marlyn Nutraceuticals*, 571 F.3d at 879) (“Mandatory injunctions, while subject to a higher standard than prohibitory injunctions, are permissible when ‘extreme or very serious damage will result’ that is not ‘capable of compensation in damages,’ and the merits of the case are not ‘doubtful.’”).

### **3.2 The Court has personal jurisdiction over Defendants.**

Defendants argue the Court lacks personal jurisdiction over them. A court may only grant injunctive relief, of course, if it has personal jurisdiction over the defendants. *Paccar Intern., Inc. v. Com. Bank of Kuwait, S.A.K.*, 757 F.2d 1058, 1061 (9th Cir. 1985). “The general rule is that personal jurisdiction over a defendant is proper if permitted by a long-arm statute and if the exercise of that jurisdiction

1 does not violate federal due process.” *Pebble Beach v. Caddy*, 453 F.3d 1151, 1154–  
2 55 (9th Cir. 2005). Because the Washington long-arm statute is coextensive with  
3 federal constitutional limits, *see RCW 4.28.185*, the Court need only address the  
4 due-process prong of the rule.

5 To satisfy due process, a defendant must have sufficient minimum contacts  
6 with the forum such that the exercise of jurisdiction “does not offend traditional  
7 notions of fair play and substantial justice.” *Pebble Beach*, 453 F.3d at 1155 (quoting  
8 *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 315 (1945)). Where, as here, a plaintiff  
9 asserts specific, not general, personal jurisdiction, three requirements must be met:  
10 (1) the non-resident defendant must purposefully direct activities at the forum, or  
11 purposefully avail themselves of the privilege of conducting activities in the forum; (2)  
12 the claim must arise out of, or relate to, the defendant's forum-related activities;  
13 and (3) the exercise of jurisdiction must comport with fair play and substantial  
14 justice. *Picot v. Weston*, 780 F.3d 1206, 1211 (9th Cir. 2015). The plaintiff has the  
15 burden of satisfying the first two prongs; the burden then shifts to the defendant to  
16 show jurisdiction is unreasonable under the third prong. *Id.* at 1211–12.

17 Because Zero Cloud’s PTPA and business interference claims sound in tort,  
18 the “purposeful direction” test applies when evaluating the first prong.  
19 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004). This  
20 test, known as the *Calder* effects test, requires that “the defendant allegedly must  
21 have (1) committed an intentional act, (2) expressly aimed at the forum state, (3)  
22 causing harm that the defendant knows is likely to be suffered in the forum state.”  
23 *Mavrix Photo, Inc. v. Brand Tech., Inc.*, 647 F.3d 1218, 1228 (9th Cir. 2011) (citing

*Calder v. Jones*, 465 U.S. 783 (1984)). “The ‘brunt’ of the harm need not be suffered in the forum state. If a jurisdictionally sufficient amount of harm is suffered in the forum state, it does not matter that even more harm might have been suffered in another state.” *Yahoo! Inc. v. La Ligue Contre Le Racisme*, 433 F.3d 1199, 1207 (9th Cir. 2006).

Zero Cloud alleges that Flying Heliball and World Tech Toys “purposely direct[ed] activity in this forum by initiating and participating in Seattle-based Amazon’s product takedown process[.]” Dkt. No. 7 at 16-17. Arguing to the contrary, Defendants claim that Flying Heliball’s takedown notice was directed at California

[REDACTED] . See Dkt. No. 17-2 at 1-2 (settlement agreement). This argument is unavailing. Under the procedure set forth in the settlement agreement [REDACTED]

settlement agreement, [REDACTED]

**ANSWER** The answer is 1000.

[View Details](#) | [Edit](#) | [Delete](#)

**ANSWER** The answer is 1000. The first two digits of the number are 10, so the answer is 1000.

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**ANSWER** The answer is (A). The first two digits of the number 1234567890 are 12.

This is purposefully directed action in the forum. Thus, the Court finds

1 that Zero Cloud's allegation satisfies the first and second elements of the *Calder*  
 2 effects test.<sup>3</sup>

3 As for the third element of the *Calder* effects test, Zero Cloud alleges that  
 4 Flying Heliball and World Tech Toy's takedown action was intended to "harm Zero  
 5 Cloud's sales of HOVERAir X1 in this forum[.]" Dkt. No. 7 at 17. This is true in a  
 6 double sense. First, Zero Cloud's sales are based in this forum considering that  
 7 Amazon, headquartered in Seattle, is the only channel through which Zero Cloud  
 8 sells the HOVER Air X1. Dkt. No. 9 at 9. Flying Heliball and World Tech Toys were  
 9 fully aware of Zero Cloud's dependence on Amazon. See Dkt. No. 1-1 at 129-30  
 10 (threat letter stating Flying Heliball's understanding that Zero Cloud has "minimal  
 11 channels of trade"). Flying Heliball and World Tech Toys thus intended to deprive  
 12 Zero Cloud of its Washington-based sales platform. Second, and relatedly, Zero  
 13 Cloud alleges that the product takedown foreseeably affected its ability to sell its  
 14 product within Washington, to Washington-based consumers. Dkt. No. 7 at 17.  
 15 These allegations are more than enough to satisfy the third prong of the *Calder*  
 16 effects test. See *SnapPower v. Lighting Def. Grp.*, 100 F.4th 1371, 1373-78 (Fed. Cir.  
 17 2024) (finding specific personal jurisdiction in Utah where defendant sent

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 19     <sup>3</sup> See *Cal. Beach Co., LLC v. Han Xian Du*, 2020 WL 6276987, at \*4 (N.D. Cal. Aug.  
 20 13, 2020), report and recommendation adopted, 2020 WL 6271225 (N.D. Cal. Oct.  
 21 26, 2020) (finding personal jurisdiction in California based on defendant  
 22 "submit[ting] the takedown notices to Facebook and Instagram, which are located in  
 23 the Northern District of California"); *Automattic Inc. v. Steiner*, 82 F. Supp. 3d  
 1011, 1023 (N.D. Cal. 2015) ("Here, the intentional act element is satisfied because  
 Defendant acted intentionally when he sent takedown notices to [California-based  
 company] Automattic."); *Amaretto Ranch Breedables v. Ozimals*, 2010 WL 5387774,  
 at \*1 (N.D. Cal. Dec. 21, 2010) (finding personal jurisdiction in California because  
 "Defendant filed a DMCA Takedown Notification with a California company").

1 infringement notice to Amazon in Washington “intending effects which would be felt  
2 in Utah”); *see also Dudnikov v. Chalk & Vermilion Fine Arts, Inc.*, 514 F.3d 1063,  
3 1068 (10th Cir. 2008). Because all three elements of the *Calder* effects test are met,  
4 the first prong of specific personal jurisdiction is satisfied.

5 The second and third prongs are satisfied as well. Zero Cloud’s claims relate  
6 to, and arise directly from, Flying Heliball and World Tech Toys’ action asserting  
7 patent infringement to Washington-based Amazon. And Flying Heliball and World  
8 Tech Toys do not show why this Court’s exercise of jurisdiction is unfair or  
9 unreasonable.

10 Defendants argue, however, that—even if the Court has specific personal  
11 jurisdiction over Flying Heliball, which initiated the takedown—Zero Cloud does  
12 not adequately allege facts to establish specific personal jurisdiction over World  
13 Tech Toys. The Court disagrees. Courts of equity may not bind “persons who act  
14 independently and whose rights have not been adjudged according to law.” *Regal*  
15 *Knitwear Co. v. N.L.R.B.*, 324 U.S. 9, 13 (1945). But World Tech Toys, as alleged,  
16 does not act independently. The Complaint asserts that Flying Heliball and World  
17 Tech Toys have the same registered address, the same registered agent, and the  
18 same CEO. Dkt. No. 1 at 3-4. The Complaint also asserts that World Tech Toys is  
19 the exclusive licensee of the ’866 Patent. *Id.* As a result, “Flying Heliball cannot  
20 grant someone else a license under the ’866 Patent without authorization from  
21 World Tech Toys.” *Id.* In other words, the licensing offers in Flying Heliball’s  
22 demand letters to Zero Zero imply action not by Flying Heliball, but by World Tech  
23 Toys. The Complaint plausibly concludes that “World Tech Toys and Flying Heliball

1 act in concert in enforcing the '866 Patent through litigation, licensing or  
 2 otherwise." *Id.*; see also Fed. R. Civ. P. 65(d)(2)(C) (a TRO or preliminary injunction  
 3 may bind "persons who are in active concert or participation" with parties); *Lynch v.*  
 4 *Rank*, 639 F. Supp. 69, 71-75 (N.D. Cal. 1985) (analyzing relation between Rule  
 5 65(d)(2)(C) and personal jurisdiction).

6 The Court therefore concludes that Zero Cloud has adequately established—  
 7 or at least established with reasonable probability<sup>4</sup>—the Court's specific personal  
 8 jurisdiction over Flying Heliball and World Tech Toys for purposes of the requested  
 9 relief.

10 **3.3 Zero Cloud fails to demonstrate a clear likelihood of success on the  
 11 merits.**

12 The first *Winter* factor, "[l]ikelihood of success on the merits[,] is the most  
 13 important factor[.]" *Edge v. City of Everett*, 929 F.3d 657, 663 (9th Cir. 2019).

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 16 <sup>4</sup> A plaintiff seeking a TRO or preliminary injunction may survive a jurisdictional  
 17 challenge when the plaintiff "adequately establish[es] that there is at least a  
 18 reasonable probability of ultimate success upon the question of jurisdiction when  
 19 the action is tried on the merits." *AVACEN, Inc. v. NuLife Ventures, LLC*, No. 20-  
 20 CV-1459-WQH-AHG, 2020 WL 13579361, at \*4 (S.D. Cal. Sept. 3, 2020) (quoting  
*Enter. Intern., Inc. v. Corporacion Estatal Petrolera Ecuatoriana*, 762 F.2d 464, 471  
 21 (5th Cir. 1985)); see also *Boschetto v. Hansing*, 539 F.3d 1011, 1015 (9th Cir. 2008)  
 22 ("Absent an evidentiary hearing, this court 'only inquire[s] into whether [the  
 23 plaintiff's] pleadings and affidavits make a prima facie showing of personal  
 jurisdiction.'") (alterations in original) (quoting *Caruth v. Int'l Psychoanalytical  
 Ass'n*, 59 F.3d 126, 127-28 (9th Cir. 1995)); *Zango, Inc. v. PC Tools Pty Ltd.*, 494 F.  
 Supp. 2d 1189, 1194 (W.D. Wash. 2007) ("[T]he Court finds that there is a  
 reasonable probability that the Court has personal jurisdiction over Defendant due  
 to the continuous and systemic business activity it conducts in the forum state.").

1           Zero Cloud alleges that Defendants violated the Patent Troll Prevention Act,  
 2 RCW 19.350 *et seq.*, by making bad-faith assertions that the HOVER Air X1  
 3 products infringe the '866 Patent. Dkt. No. 1 at 31-33. As alleged, Defendants made  
 4 these bad-faith assertions both in their demand letters to Zero Zero and their  
 5 infringement notice and related communications to Amazon. *Id.* Zero Cloud also  
 6 alleges that Defendants committed tortious interference with Zero Cloud's  
 7 relationship and business expectancies with Amazon and with customers who, but  
 8 for Defendants' bad-faith infringement assertions, would have otherwise bought the  
 9 HOVER Air X1 products on Amazon. *Id.* at 33-34.

10           Even setting aside the specific elements necessary to establish these claims,  
 11 the Court notes that Zero Cloud must survive federal preemption to succeed on the  
 12 merits. As the Federal Circuit explained in *Globetrotter*:

13           "[F]ederal patent law preempts state-law tort liability for a  
 14 patentholder's good faith conduct in communications asserting  
 15 infringement of its patent and warning about potential litigation. See,  
 16 e.g., *Zenith Elecs. Corp. v. Exzec, Inc.*, 182 F.3d 1340, 1355 (Fed. Cir.  
 17 1999). State-law claims... can survive federal preemption only to the  
 18 extent that those claims are based on a showing of 'bad faith' action in  
 19 asserting infringement. *Id.* Accordingly, to avoid preemption, "bad faith  
 20 must be alleged and ultimately proven, even if bad faith is not otherwise  
 21 an element of the tort claim." *Id.*

22           *Globetrotter Software, Inc. v. Elan Comput. Grp., Inc.*, 362 F.3d 1367, 1374 (Fed.  
 23 Cir. 2004). In short, "[t]he federal patent laws thus bar state-law liability for  
 24 communications concerning alleged infringement so long as those communications  
 25 are not made in 'bad faith.'" *Id.* at 1374-75. Under this federal preemption doctrine,  
 to establish that an assertion of patent infringement was made in bad faith—and  
 therefore can survive preemption—a plaintiff must prove by clear and convincing

1 evidence that the infringement assertion is both (1) “objectively baseless,” and (2)  
2 made in “subjective bad faith.” *Id.* at 1377, 1367 n.8; *see also Washington v.*  
3 *Landmark Tech. A, LLC*, 637 F. Supp. 3d 1154, 1162 (W.D. Wash. 2022) (construing  
4 the Washington Patent Troll Prevention Act in light of federal preemption doctrine  
5 to require a clear and convincing showing of objective baselessness and subjective  
6 bad faith).

7 Zero Cloud makes a plausible case that—on a more developed evidentiary  
8 record—it will clear these hurdles. On its face, the ’866 Patent describes a simply  
9 binary system: if the device’s receptor receives the bounced-back light signal, its  
10 propellers spin such that the device gains altitude; if not, the propellers spin such  
11 that the device loses altitude. By contrast, Zero Cloud alleges that the HOVER Air  
12 X1 utilizes far more sophisticated means of environmental detection. Zero Cloud  
13 also alleges that throughout its dispute with Flying Heliball, Flying Heliball has  
14 repeatedly concealed and altered its theory of infringement, suggesting subjective  
15 bad faith. At oral argument, Zero Cloud emphasized that Flying Heliball has  
16 expressly admitted that the initial complaint in its enforcement action against Zero  
17 Cloud erroneously characterized the HOVER Air X1’s VIO camera system as a  
18 “transmitter” within the meaning of the ’866 Patent; yet despite this admission,  
19 Flying Heliball has not retracted the Amazon takedown notice incorporating this  
20 abandoned infringement theory.

21 But on the evidentiary record before the Court, Zero Cloud has not made the  
22 requisite clear showing that Flying Heliball’s assertion of patent infringement is  
23 both objectively baseless and subjectively bad-faith. Despite abandoning its theory

1 that the HOVER Air X1 camera is a “transmitter” within the meaning of the ’866  
2 Patent, Flying Heliball and World Tech Toys remain steadfast in their infringement  
3 claims. In the Central District of California litigation, Flying Heliball has moved for  
4 leave to amend its complaint to clarify an infringement theory based on the HOVER  
5 Air X1’s “LiDAR system as the transmitter and receiver of a signal for the asserted  
6 claims.” Dkt. No. 1-1 at 241. Zero Cloud provides this Court with almost no evidence  
7 about the technical operations of the HOVER Air X1; yet it does tell the Court that  
8 the device’s “ToF system” detects the device’s environment through emission and  
9 subsequent reception of infrared light. Dkt. No. 1 at 17. On the record presently  
10 available—and without an evidentiary hearing and a reasoned construction of the  
11 ’866 Patent—the Court cannot conclude that this ToF system is non-infringing, let  
12 alone that Flying Heliball’s infringement theories (whether the initial theory or the  
13 revised theory) meet the criteria of objective baselessness and subjective bad faith.  
14 Thus, Zero Cloud fails to demonstrate a clear likelihood of success on the merits—  
15 the “most important factor” for preliminary injunctive relief. *See Edge*, 929 F.3d at  
16 663.

17 **3.4 Zero Cloud fails to demonstrate a clear likelihood of irreparable  
18 harm absent preliminary injunctive relief.**

19 Zero Cloud argues that, absent immediate injunctive relief, it will suffer  
20 several forms of irreparable harm because of the Amazon takedown: (1) loss of the  
21 consumer goodwill generated by past sales; (2) lost ability to reach customers using  
22 the legacy Prime-eligible ASINs under Amazon’s FBA program; (3) loss of the  
23 rankings, positive comments, and reviews on its product listings; (4) reputational

1 loss in the technology industry; and (5) loss of revenue during the holiday shopping  
2 season. Dkt. No. 7 at 24-28; *see generally* Dkt. No. 9.

3 It is true that reputational harm, loss of customer goodwill, and threatened  
4 loss of prospective customers can sometimes support a finding of irreparable harm.  
5 *See, e.g., Stuhlbarg Int'l Sales Co.*, 240 F.3d at 841; *Herb Reed Enterprises, LLC v.*  
6 *Fla. Ent. Mgmt., Inc.*, 736 F.3d 1239, 1250 (9th Cir. 2013); *adidas Am., Inc. v.*  
7 *Skechers USA, Inc.*, 890 F.3d 747, 756 (9th Cir. 2018); *Rent-A-Center, Inc. v. Canyon*  
8 *Television & Appliance Rental, Inc.*, 944 F.2d 597, 603 (9th Cir. 1991). Indeed, in  
9 multiple cases involving product de-listings resulting from assertions of intellectual  
10 property infringement, courts have found sufficient irreparable harm to grant  
11 preliminary injunctive relief. *See, e.g., Medcursor Inc. v. Shenzen KLM Internet*  
12 *Trading Co.*, 543 F. Supp. 3d 866 (C.D. Cal. 2021); *Beyond Blond Prods. v.*  
13 *Heldman*, 479 F. Supp. 3d 874, 888 (C.D. Cal. 2020). Such findings are particularly  
14 warranted where the evidence indicates that the plaintiff is likely to go out of  
15 business absent immediate relief—which does *not* appear to be the case here. *See*  
16 *Mecdusror*, 543 F. Supp. 3d at 878.

17 Zero Cloud has proffered evidence that its sales have suffered from the  
18 Amazon takedown. *See generally* Dkt. No. 9 (declaration from Zero Cloud's Director  
19 of Ecommerce). But it is less clear whether Zero Cloud faces irreparable harm that  
20 cannot be cured with monetary damages—no matter how technically complex such  
21 damage calculation may be. The gist of the alleged harm to Zero Cloud is past and  
22 future lost sales. “Purely economic harms are generally not irreparable, as money  
23 lost may be recovered later, in the ordinary course of litigation.” *Idaho v. Coeur*

1       *d'Alene Tribe*, 794 F.3d 1039, 1046 (9th Cir. 2015) (citing *Sampson v. Murray*, 415  
2 U.S. 61, 61–62, 89–92 (1974)).

3              Zero Cloud states that the “continued product takedown will cause Zero  
4 Cloud to miss the limited window of opportunity to market and sell the  
5 HOVERAirX1 during the upcoming holiday season and excitement from launch of  
6 new higher-end professional HOVERAir X1 PRO products,” which “was expected to  
7 generate a surge in interest in the standard HOVERAir X1 itself[.]” Dkt. No. 7 at  
8 25-26. This assertion does not sway the Court. Besides finding the core of the  
9 alleged harm to be economic, the Court views these claims about lost future sales as  
10 speculative. “Speculative injury does not constitute irreparable injury sufficient to  
11 warrant granting a preliminary injunction.” *Caribbean Marine Servs. Co., Inc. v.*  
12 *Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988). This is especially the case here, given  
13 that the evidence before the Court suggests that Zero Cloud is still able to sell its  
14 HOVER Air X1 products on Amazon; only its so-called legacy listings, i.e., those  
15 with the greatest amount of consumer traction, have been taken down.

16              Given that Zero Cloud has fallen short of the requisite showing on the merits  
17 of its claims (*see supra* § 3.3)—and given that mandatory injunctions are  
18 appropriate only when a plaintiff faces “extreme or very serious damage” that is not  
19 “capable of compensation” (*see Hernandez*, 872 F.3d at 999)—the Court concludes  
20 that Zero Cloud has failed to demonstrate the clear likelihood of irreparable harm  
21 necessary to justify the extraordinary relief of a TRO or preliminary injunction.

1           **3.5 The balance of equities do not clearly favor preliminary injunctive  
2 relief.**

3           Finally, the Court considers the balance of equities. Zero Cloud alleges that  
4 the balance of equities favors relief because Flying Heliball and World Tech Toys  
5 will not be irreparably harmed by the retraction of their false, bad-faith takedown  
6 notice. But if the HOVER Air X1 is, indeed, infringing, then the balance of equities  
7 is reversed: forcing Flying Heliball and World Tech Toys to take affirmative action  
8 inducing the *re-listing* of the infringing products would be inequitable. Therefore,  
9 this factor does not clearly compel injunctive relief.

10           **4. CONCLUSION**

11           On the evidentiary record before the Court, the Court concludes that Zero  
12 Cloud has failed to satisfy its burden of meeting all four *Winter* factors. Zero Cloud's  
13 Motion for Temporary Restraining Order and Preliminary Injunction, Dkt. No. 7, is  
therefore DENIED.

14           That said, the Court notes that this conclusion about the appropriateness of  
15 preliminary injunctive relief may plausibly differ with the development of a more  
16 complete evidentiary record. As discussed above, Zero Cloud's likelihood of success  
17 on the merits hinges largely on whether Flying Heliball and World Tech Toys'  
18 patent infringement assertion is in bad faith. That determination is linked to the  
19 issue of actual infringement, which is currently being litigated in the Central  
20 District of California. Perhaps, then, the most fair and efficient means of assessing  
21 the merits of Zero Cloud's claims is to stay this action while that parallel case  
22 proceeds, at least through the pleading stage. Or perhaps the most fair and efficient  
23

means of adjudicating this case is to set a preliminary injunction hearing with an attendant briefing schedule, to accept and evaluate evidence on the issues of objective infringement and subjective bad faith, and to thereby develop greater clarity on the likelihood of success on the merits of Zero Cloud's Washington state-law claims.

The Court therefore ORDERS the parties to submit supplemental briefing to the Court, not to exceed SIX (6) pages, regarding the optimal case management approach within SEVEN (7) DAYS of the date of this Order. This briefing should address the application, if any, of the first-to-file rule on this action. *See Kohn L. Grp., Inc. v. Auto Parts Mfg. Mississippi, Inc.*, 787 F.3d 1237 (9th Cir. 2015).

It is so ORDERED.

Dated this 4th day of November, 2024.



Jamal N. Whitehead  
United States District Judge